SECTION – III

(VOLUME - I)

GENERAL TERMS & CONDITIONS OF CONTRACT (GCC)

GENERAL TERMS & CONDITIONS OF CONTRACT,

CONTENTS

S1. No. Description

A. INTRODUCTION

1.0 Definition of Terms
2.0 Application
3.0 Standards
4.0 Language and Measures
5.0 Contract Documents
6.0 Use of Contract Documents and Information
7.0 Construction of the Contract
8.0 Laws governance Contract
9.0 Manner of Execution of Contract
10.0 Enforcement of Terms
11.0 Completion of Contract

B. GUARANTEES & LIABILITIES

12.0 Time-The Essence of Contract
13.0 Effectiveness of Contract
14.0 Penalty
15.0 Guarantee
16.0 Taxes, Permits &; Licensees
17.0 Replacement of Defective Parts and Materials
18.0 Patent Rights and Royalties
19.0 Defense of Suits,
20.0 Limitation of Liabilities
21.0 Engineer's Decision
22.0 Power to vary or omit Work
23.0 Assignment and sub-letting of Contract
24.0 change of Quantity
25.0 Packing, forwarding and shipment
26.0 Cooperation with other Contractors and consulting Engineers
27.0 No waiver of rights
28.0 Certificate not to affect right of BESCOM and liability of Contractor
29.0 Training of BESCOMs Personnel
30.0 Progress Reports and Photographs
31.0 Taking Over

C. CONTRACT SECURITY AND PAYMENTS
32.0 Contract Performance Security/ Guarantee
33.0 Contract Price Adjustment
34.0 Payment
35.0 Deductions from Contract Price

D. RISK DISTRIBUTION
36.0 Transfer of the Title
37.0 Insurance
38.0 Liability for Accidents and Damages
39.0 Delays by Owner or His Authorized Agents
40.0 Demurrage, Wharfage etc.
41.0 Force Majeure
42.0 Suspension of Work
43.0 Contractor's Default
44.0 Termination of Contract on BESCOM's initiative.
45,0 Frustration of Contract
46.0 Grafts and Commission etc.

E. RESOLUTION OF DISPUTES
47.0 Settlement of Disputes
48.0 Reconciliation of Accounts
49.0 Inspection and Tests
50.0 Notices

SECTION-III - GCC

GENERAL TERMS & CONDITIONS OF CONTRACT

A. INTRODUCTION

1.0 Definition of Terms:

1.1 '**The Contract**' means the **Agreement** entered into between BESCOM and Contractor as per the Contract Agreement signed by the Parties including all attachments and appendices there to and all Documents incorporated by reference therein.

1.2 'OWNER' shall mean the **Bangalore Electric Supply Company, Limited (BESCOM)** and shall include their Legal Representatives, Successors and Assigns.

1.3 '**Contractor**' shall mean the **Bidder** whose Bid will be accepted by the **BESCOM** for the Award of the Works.

1.3.1 **Bidder '**shall mean an individual bidder participating in the tender, who may be a registered sole proprietorship firm, a partnership firm or a company registered under companies act.

1.4 void

1.5 **'Engineer'** shall mean the Officer appointed in writing by the **BESCOM** to act as Engineer from time to time for the purposes of the Contract.

1.6 '**Consulting Engineer**' shall mean any Firm or Persons duly appointed as such from time to time by the **BESCOM**.

1.7 The terms **'Equipment's' 'Stores' and 'Materials'** shall mean and include Equipment, Stores and Materials to be provided by the Contractor under the Contract.

1.8 '**Works**' shall mean and include supplying of Equipment/Material in the Scope of the Contractor and extending all Services, as per the Specifications and Complete Erection, Testing and Putting into Satisfactory Operation including all Transportation, Handling, Unloading and Storage at the Site as defined in the Contract.

1.9 '**Specifications**' shall mean the Specifications and Bidding Document forming a Part of the Contract and such other Schedules and Drawings as may be mutually agreed upon.

1.10 '**Site**' shall mean and include the Land and other places on, into or through which the Works and the related facilities are to be Erected or Installed and any adjacent Land, Paths, Street or Reservoir which may be allocated or used by the BESCOM or Contractor in the Performance of the Contract.

1.11 The term '**Contract Price**' shall mean **the awarded price at the approved percentage on the amount put to tender based percentage** quoted by the Contractor in his bid with additions and/or deletions as may be agreed and incorporated in the letter of award, for the entire scope of the works.

1.12 The term '**Equipment/ Material Portion**' of the Contract Price shall mean the Total Value of the Equipments including Freight & Insurance with all types of applicable Taxes such as CGST, SGST, IGST, UTGST, Duties and cess if any etc. The Term '**Erection Portion**' of the Contract Price shall mean the Value of Field Activities of the Works including Erection, Testing and Putting into Satisfactory Operation including Successful Completion of Performance and Guarantee Tests to be performed at Site by the Contractor including Cost of Insurances.

1.13 '**Manufacturer's Works**' or '**Contractor's Works**', shall mean the place of Work used by the Contractor for the Performance of the Contract.

1.14 **'Inspector'** shall mean the BESCOM or any Persons nominated by the BESCOM from time to time, to inspect the Equipment, Stores or Works under the Contract and/or the duly Authorised Representative of the BESCOM.

1.15 **'Notice of Award of Contract'/'Letter of Award /Letter of Intent'** shall mean the Official Notice issued by the BESCOM notifying the Contractor that his Bid has been accepted.

1.16 '**Date of Contract**' shall mean the date on which Notice of Award of Contract/ Letter of Award has been issued.

1.17 **'Month'** shall mean the Calendar Month. **'Day'** or **'Days'** unless herein otherwise expressly defined shall mean Calendar Day or Days of 24 Hours each. '**A Week'** shall mean continuous period of Seven (7) Days.

1.18 '**Writing**' shall include any Manuscript, Type Written, Computer Generated or Printed Statement, under or over Signature and/or Seal, as the case may be.

1.19 When the words '**Approved', Subject to Approval', Satisfactory', 'Equal to', 'Proper', 'Requested', 'As Directed', Where Directed', 'When Directed', 'Determined by, 'Accepted', 'Permitted'**, or Words and Phrases of like importance are used, the Approval, Judgment, Direction etc is understood to be a function of the **BESCOM/Engineer.**

1.20 '**Test on Completion**' shall mean such Tests as prescribed in the Contract to be performed by the Contractor before the Work is taken over by the BESCOM.

1.21 '**Initial Operation**' shall mean the first Integral Operation of the Complete Equipment covered under the Contract in Service or available for Service.

1.23 '**Performance and Guarantee Test** 'shall mean all Operational checks and Tests required to determine and demonstrate Capacity, Efficiency, and Operating Characteristics as specified in the Contract Documents.

1.25 The term '**Final Acceptance/Taking Over**' shall mean the **BESCOM's** written acceptance of the Works performed under the Contract, after successful Commissioning/ Completion of Performance and Guarantee Tests, as specified in the accompanying Technical Specification or other-wise agreed in the Contract.

1.26 '**Guarantee Period**' / '**Maintenance Period**' shall mean the period during which the Contractor shall remain liable for Repair or Replacement of any defective Part of the Works performed under the Contract.

1.27 '**Latent Defects**' shall mean such defects caused by faulty Design, Material or Workmanship which cannot be detected during Inspection, Testing etc. based on the Technology available for carrying out such Tests.

1.28 '**Drawing', 'Plans'** shall mean all:

a) Drawings furnished by the BESCOM/ Consultant as a basis for Bid/ Proposals.

b) Supplementary Drawings furnished by the BESCOM/ Consultant to clarify and to define in greater detail the intent of the Contract.

c) Drawings submitted by the Contractor with his Bid, provided such Drawings are acceptable to the BESCOM/ Consultant.

d) Drawings furnished by the BESCOM/ Consultant to the Contractor during the progress of the Work; and

e) Engineering Data and Drawings submitted by the Contractor during the progress of the Work provided such Drawings are acceptable to the BESCOM/Consultant.

1.29 **'Codes'** shall mean the following, but not limited to, including the latest Amendments, and/or Replacements if any:

a. Indian Electricity Act, 2003 for further codes and Rules and Regulations made there under.
b. Indian Factory Act, 1948, and Rules and Regulations made thereunder.
c. Indian Explosive Act, 1884, and Rules and Regulations made thereunder.
d. Indian Petroleum Act, 1934, and Rules and Regulations made there under.
e. A.S.M.E. Test Codes.
f. A.I.E.E. Test Codes.
g. American Society of Materials Testing Codes.
h. Standards of the Indian Standards Institution.
i. Other Internationally approved Standards and/or Rules and Regulations touching the subject Matter of the Contract.

1.30 Words imparting the **Singular only** shall also include the **Plural** and vice-versa where the Context so requires.

1.31 Words imparting **'Persons'** shall include Firms, Companies, Corporation and Associations or Bodies of individuals, whether incorporated or not.

1.32 **"Bidding Documents"**: Means Information & Instructions, General Conditions of Contract, Special Conditions of Contract, Technical Specifications, Drawings and other Annexures included in Sections IFB, ITB, GCC, SCC, TS, DRS, BPS.

1.33 **"Tests on Completion":** Means the Tests that are prescribed in the Bidding Documents to be made before Materials are accepted by the BESCOM.

1.34 **"Destination"** : Means the Location where the Goods are specified to be delivered and where they will be accepted by the BESCOM.

1.35 **"Engineer":** Engineer means The General Manager, Procurement, Corporate Office, KR. Circle, Bangalore, BESCOM./SE(El), C, O&M Circles/EE, C,O&M Division/AEE C,O&M Sub division/AE/JE of the section.

1.36 **"Owner's Representative"**: Mean,
General Manager, Procurement / The Superintending Engineer (Elec.) of Circles / The Executive Engineer (Elec.) of Divisions.

OR

Any other Engineer who has been assigned with the Job

1.37 "**Commissioning:** mean charging the Electrical equipment's at Rated Voltage after Completion of Erection, Testing and Completion of Pre-Commissioning checks.

1.38 The Term '**Services**' means Services Ancillary to the Supply of Goods such as Port Clearance, Transportation and Insurance and any other Incidental Services, such as Civil, Structural and Architectural Works, Erection, Testing and Commissioning and other such obligation of the Contractor covered under the Contract.

1.39 In addition to the above, the following definitions shall also apply:

a) '**All Equipment and Materials**' to be supplied shall also mean '**Goods**'.
b) **'Executed'** shall also mean **Completed & commissioned.**
c) **'Contract Performance Guarantee'** shall also mean **'Performance Guarantee'.**

1.40 Terms and Expressions not herein defined shall have the same meanings as are assigned to them in the Sale of Goods Act (1930), Indian Contract Act (1872) and General Clauses Act (1897) including Amendments thereof if any.

1.41 HT- means High Tension.

1.42 LT - means Low Tension.

1.43 UG Cable – Under Ground cable
AB Cable – Aerial Bunched cable

1.45 Successful bidder/awarded agency/Contractor–means the bidder who has been selected by BESCOM, pursuant to the bidding process for award of contract.

1.46 PMA- Project Monitoring Agency

1.47 YEAR – means the Consecutive 12 months.

1.48 Successful operation: means the materials installed shall be in service & performing satisfactorily.

2.0 **Application:**

These General Conditions shall apply to the extent that they are not superseded by Provisions in other Parts of the Contract.

3.0 **Standards:**

The Goods supplied under this Contract shall conform to the Standards mentioned in the Technical Specification and, when no applicable Standard is mentioned, to the authoritative Standard appropriate to the Goods and such Standards shall be the latest issued by the concerned Institution.

4.0 **Language and Measures:**

All Documents pertaining to the Contract including Specification, Schedules, Notices, Correspondence, Operating and Maintenance Instructions, Drawings or any other Writing shall be written in English / Kannada language. The Metric System of measurement shall be used exclusively in the Contract.

5.0 **Contract Documents:**

5.1 The term Contract Documents shall mean and include the following which shall be deemed to form an integral part of the Contract:

a) Invitation of Bid including letter forwarding the Bidding Documents, Instructions to Bidders, General Terms and Conditions of Contract, Erection Conditions of Contract, Special Conditions of Contract, and all other Documents included under Volume-I.

b) Specifications of the Equipment/ Material to be furnished and erected under the Contract as brought out in the accompanying Technical Specifications and Data Requirement Sheets.

c) Contractor's Bid Proposal and the Documents attached thereto including the Letters of Clarifications thereto between the Contractor and the BESCOM prior to the Award of Contract except to the extent of repugnancy.

d) All the Materials, Literature, Data and Information of any sort given by the Contractor along with his Bid, subject to the approval of the BESCOM.

e) Letter of Award and any agreed variations of the Conditions of the Documents and Special Terms and Conditions of Contract, if any.

5.2 In the event of any conflict between the above mentioned Documents, the matter shall be referred to the Engineer whose decision shall be considered as final and binding upon the Parties.

5.3 All the relevant Information/ Material furnished by the Contractor such as Specifications of Material/ Equipment, Design, Literature, Drawings or any other Data during the course of Contract will become the Property

of the BESCOM and BESCOM will have full rights to use the same elsewhere.

6.0 **Use of Contract Documents and Information:**

6.1 The Contractor shall not, without the BESCOM's prior written consent, disclose the Contract, or any provision thereof, or any Specification, Plan, Drawing, Pattern, Sample or Information furnished by or on behalf of the BESCOM in connection therewith, to any Persons other than a Person employed by the Contractor in the Performance of the Contract. Disclosure to any such employed Persons shall be made in confidence and shall extend only so far, as may be necessary for purposes of such Performance.

6.2 The Contractor shall not, without the BESCOM's prior written consent, make use of any Document or information enumerated in various Contract Documents except for purpose of performing the Contract.

6.3 The Contractor shall not communicate or use in Advertising, Publicity, Sales Releases or in any other Medium, Photographs or other reproduction of the Works under this Contract, or descriptions of the Site, Dimensions, Quantity, Quality or other information, concerning the Works unless prior written permission has been obtained from the BESCOM.

6.4 Any Document, other than the Contract itself, enumerated in various Contract Documents, shall remain the property of the BESCOM and shall be returned (in all copies) to the BESCOM on Completion of the Contractor's Performance under the Contract, if so required by the BESCOM.,

7.0 Construction of the Contract:

7.1 Notwithstanding anything stated elsewhere in the Bid Documents, the **Single Works Contract** covering both Supply & Erection portion of the item wise fixed Price Contract will be issued to the successful Bidder.

8.0 **Law Governing of Contract:**

8.1 The Contract, shall in all respects be constructed and governed according to Indian Laws

8.2 The **Courts of Bengaluru** shall have exclusive jurisdiction in all matters arising under this Contract.

9.0 **Manner of Execution of Contract:**

9.1 The Contract, unless otherwise agreed to, shall be signed within 15 days of the date the Letter of Intent, at the Office of **General Manager (Ele.,), Procurement, Corporate Office, BESCOM**, **Bengaluru**, on a date and time to be mutually agreed to.

9.2 The Agreement shall be signed in Duplicate and the Contractor shall be provided with one signed copy and the BESCOM will retain the Original.

9.3 The Contractor shall provide free of Cost to the BESCOM, the Engineering Data, Drawings and Descriptive Materials, in at least 2 copies to form a part of the Contract immediately after issue of Letter of Award.

9.4 Subsequent to signing of the Contract, the Contractor at his own Cost shall provide the BESCOM with at least Fifteen (15) true Bounded Copies of Contract documents within thirty (30) days after the signing of the Contract.

10.0 **Enforcement of terms:**

10.1 The failure of either Party to enforce at any time any of the provisions of this Contract or any rights in respect thereto or to exercise any option therein provided, shall in no way be constructed to be a waiver of such provisions, rights or options or in any way to affect the validity of the Contract. The exercise by either Party of any of its rights herein shall not preclude or prejudice either Party from exercising the same or any other right it may have under the Contract.

11.0 **Completion of Contract:**

11.1 Unless otherwise terminated under the provisions of any other relevant Clause, this Contract shall be deemed to have been completed on the expiry of the Guarantee Period as provided for under the Clause 15.0 entitled ‘Guarantee' in Section-III, Volume-I of GCC.

B. GUARANTEES & LIABILITIES

12.0 **Time - the essence of Contract:**

12.1 The Time and the Date of Completion of the Contract as stipulated in the Contract by the BESCOM without or with modifications, if any, and so incorporated in the Letter of Award, shall be deemed to be the essence of the Contract. The Contractor shall so organize his resources and perform his Work as to complete it not later than the date agreed to.

12.2 The Contractor shall submit a detailed **Activity Chart acceptable to the owner**, within the time frame agreed, consisting of adequate number of activities covering various key Phases of the Work such as Design, Drawings, Procurement, Manufacturing, Shipment, Receiving of the Owner Supplied Equipment's (if any), and Field Erection activities within fifteen (15) days of the date of Notice of Award of Contract. This activity chart shall also indicate the Interface facilities to be provided by the Owner and the dates by which such facilities are needed. The Contractor shall discuss the Chart so submitted with the Owner and the agreed Chart shall form part of the Contract Documents. During the Performance of the Contract, if in the opinion of the Engineer, proper progress is not maintained, Suitable changes shall be made in the Contractor's Operations to ensure proper progress without any Cost implication to the Owner. The Interface Facilities to be provided by the Owner in accordance with the agreed **activity Chart** shall also be reviewed while reviewing the progress of the Contract. The **Activity Chart** should be reviewed, updated, once in every Month and submitted to Engineer for approval.

12.3 Based on the above-agreed Network Chart, fortnightly reports shall be submitted by the Contractor as directed by the Engineer.

12.4 Subsequent to the, finalization of the Network, the Contractor shall make available to the Engineer a detailed Manufacturing Program, in line with the agreed Contract Network. Such Manufacturing Program shall be reviewed, updated and submitted to the Engineer once in every two Months thereafter.

12.5 The above Activity Chart /PERT Charts/ Manufacturing Program shall be compatible with the Owner's Computer environment and furnished to the Owner on such Media as may be desired by the Owner.

13.0 **Effectiveness of Contract:**

The Contract shall be considered as having come into force from the date of **Letter of Award**.

14.0 **Penalty:**

14.1 **For Equipment Portion:**

If the Contractor fails to successfully complete the Commissioning within the time fixed under the Contract, the Contractor shall pay to the BESCOM as **Penalty** a Sum specified for each specified period of Delay. The details of such **Penalties** are brought out in the

accompanying Special Conditions of Contract (SCC). Equipment and Materials will be deemed to have been delivered only when all its Components, Parts are also delivered. If certain Components are not delivered in time, the Equipment and Materials will be considered as delayed until such time the missing Parts are also delivered. The total amount of **Penalties** for delay under the Contract will be subject to a maximum 10% of the Contract Price.

14.2 **Penalty** for not meeting Performance Guarantees during the Performance and Guarantee Tests shall be assessed and recovered from the Contractor as detailed in Technical Specification/ Special Conditions of Contract. Such Liquidated Damages shall be without any limitation whatsoever and shall be in addition to Damages, if any, payable under any other Clause of Condition of Contract.

15.0 **Guarantee:**

15.1 The Contractor shall warrant that the Equipment supplied by him will be new, unused and in accordance with the Contract Documents and free from defects in Material and Workmanship for a period of **Sixty Months (60) Months in respect of, Insulators, Rabbit/Coyote ACSR Conductor, UG Cable, AB Cable, RMUs, GOS and 12 (Twelve) months for all other equipment's/materials of the work commencing immediately upon the satisfactory commissioning as per BESCOM OM No. GM(QS&S)/DGM(El.,)-3)/BC-11/19-20/CYS-12 Date:29.04.2019.** The Contractor's liability shall be limited to the replacement of any defective parts in the Equipment of his own Manufacture or those of his vendors, under normal use and arising solely from faulty Design, Materials and/or Workmanship provided always that such defective parts are repairable at the Site and are not in the meantime essential in the Commercial use of the Equipment. Such replaced/ defective parts shall be returned to the Contractor unless otherwise arranged. No repairs or replacement shall normally be carried out by the Engineer, when the Equipment is under the supervision of the Contractor's Supervisory Engineer.

15.2 In the event of any emergency where in the judgment of the Engineer, delay would cause serious loss or Damages, repairs or adjustment may be made by the Engineer or a third Party chosen by the Engineer without advance Notice to the Contractor and the Cost of such Work shall be paid by the Contractor. In the event such action is taken by the Engineer, the Contractor will be notified promptly and he shall assist wherever possible in making necessary corrections. This shall not relieve the Contractor of his liabilities under the Terms and Conditions of the Contract.

15.3 If it, becomes necessary for the Contractor to replace or renew any defective portions of the Works, the provision of this Clause shall apply to portion of the Works so replaced or renewed until the expiry of **Sixty Months (60) Months in respect of Insulators, Rabbit/Coyote ACSR Conductor, UG Cable, AB Cable, RMUs, GOS and 12 (Twelve) months for all other equipment's/materials of the work** from the date of such replacement or renewal. If any defects are not remedied within a reasonable time, the Engineer may proceed to do the Work at the Contractor's risk and Cost but without prejudice to any other rights, which the BESCOM may have against the Contractor in respect of such defects.

15.4 New parts will be furnished and erected free of Cost by the Contractor. If any repair is carried out on his behalf at the Site, the Contractor shall bear the Cost of such repairs.

15.5 The Cost of any special or general overhaul rendered necessary during the maintenance period due to defects in the Equipment or defective Work carried out by the Contractor, the same shall be borne by the Contractor.

15.6 The acceptance of the Equipment by the Engineer shall in no way relieve the Contractor of his obligations under this Clause.

15.7 In the case of those defective parts which are not repairable at Site but are essential for the Commercial Operation of the Equipment, the Contractor and the Engineer shall mutually agree to a program of replacement or renewal which will minimise interruption to the maximum extent, in the Operation of the Equipment.

16.0 Taxes, Permits & Licenses:

The Contractor shall be liable and pay all types of applicable Taxes such as CGST, SGST, IGST, UTGST, Duties, Levies, CESS if any, lawfully assessed against the Owner or the Contractor in pursuance of the Contract. In addition the Contractor shall be responsible for Payment of all Indian Duties, Levies and all Taxes, CESS if any lawfully assessed against the Contractor for his Personal Income and Property.

17.0 Replacement of Defective Parts and Materials:

17.1 If during the Performance of the Contract, the Engineer shall decide and inform in writing to the Contractor that the Contractor has Manufactured any Equipment, Material or part of Equipment unsound and imperfect or has furnished any Equipment inferior to the Quality specified, the Contractor on receiving details of such defects or deficiencies shall at his own expense within seven (7) days of his

receiving the Notice, or otherwise, within such time, as may be reasonably necessary for making it good, proceed to alter, reconstruct or remove such Work and furnish fresh Equipment/ Materials up to the Standards of the Specifications. In case the Contractor fails to do so, the Engineer may on giving the Contractor seven (7) days' Notice in writing of his intentions to do so, proceed to remove the portion of the Works so complained of and at the Cost of the Contractor perform all such Work or furnish such Equipment/ Material provided that nothing in this Clause shall be deemed to deprive the Owner of or affect any rights under the Contract which the Owner may otherwise have in respect of such defects and deficiencies.

17.2 The Contractor's full and extreme liability under this Clause shall be satisfied by the Payment to the Owner of the extra Cost, of such replacement procured including Erection as provided for in the Contract, such extra Cost being the ascertained difference between the Price paid by the Owner for such replacements and the Contract Price by portion for such defective Equipment/ Material/ Works and repayments of any Sum paid by the Owner to the Contractor in respect of such defective Equipment/ Material. Should the Owner not so replace the defective Equipment/Materials, the Contractor's extreme liability under this Clause shall be limited to repayment of all Sums paid by the Owner under the Contract for such defective Equipment /Materials.

18.0 **Patent Right and Royalties:**

Royalties and Fees for Patents covering Materials, Articles, Apparatus, Devices, Equipment or Processes used in the Works shall be deemed to have been included in the Contract Price. The Contractor shall satisfy, all demands that may be made at any time for such Royalties or Fees and he alone shall be liable for any Damages or Claims for Patent infringements and shall keep the Owner indemnified in that regard. The Contractor shall, at his own Cost and expense, defend all Suits or Proceedings that may be instituted for alleged infringement of any Patents involved in the Works, and, in case of an Award of Damages, the Contractor shall pay for such Award. In the event of any Suit or other Proceedings instituted against the Owner, the same shall be defended at the Cost and expense of Contractor who shall also satisfy/comply with any Decree, Order or Award made against the Owner. But it shall be understood that no such Machine, Plant, Work, Material or Thing has been used by the Owner for any purpose or manner other than that for which they have been furnished and installed by the Contractor and specified under these Specifications. Final Payment to the Contractor by the Owner will not be made while any such Suit or Claim remains unsettled. In the event any Apparatus or Equipment, or any Part thereof furnished by the Contractor, is in such Suit or Proceedings held to constitute infringement, and its use is

enjoined, the Contractor shall at his option and at his own expense, either procure for the Owner, the right to continue the use by Owner of said Apparatus, Equipment or part thereof, replace it with non infringing Apparatus or Equipment or modify it, so that it becomes non-infringing.

19.0 **Defense of Suits:**

If any action in Court is brought against the BESCOM or Engineer or an Officer or representative of the BESCOM, for the failure, omission or neglect on the part of the Contractor to perform any Acts, Matters, Covenants or things under the Contract, or for Damage or injury caused by the alleged omission or negligence on the part of the Contractor, his Agents, Representatives or his Sub-Contractors, or in connection with any Claim based on lawful demands of Sub-Contractors, Workmen, Suppliers or Employees, the Contractor shall in all such cases indemnify and keep the BESCOM, and the Engineer and/or his Representative, harmless from all losses, Damages, expenses or Decrees arising of such action.,

20.0 **Limitation of Liabilities:**

The final Payment by the Owner in pursuance of the Contract shall mean the release of the Contractor from all his liabilities under the Contract. Such final Payment shall be made only at the end of the Guarantee/ Warranty Period, and till such time as the Contractual liabilities and responsibilities of the Contractor, shall prevail. All other Payments made under the Contract shall be treated as on account Payments.

21.0 **Engineer's Decision:**

21.1 In respect of all matters which are left to the decision of the Engineer including the granting or with-holding of the Certificates, the Engineer shall, if required to do so by the Contractor, give in writing a decision thereon.

21.2 If, in the opinion of the Contractor, a decision made by the Engineer is not in accordance with the meaning and intent of the Contract, the Contractor may file with the Engineer, within fifteen (15) days after receipt of the decision, a written objection to the decision. Failure to file an objection within the allotted time will be considered as an acceptance of the Engineer's decision and the decision shall become final and binding.

21.3 It is the intent of the Agreement that there shall be no delay in the execution of the Works and the decision of the Engineer as rendered shall be promptly observed.

22. 0 **Power to Vary or Omit Work:**

22.1 No Alterations, Amendments, Omissions, Suspensions or Variations of the Works (hereinafter referred to as '**Variation'**) under the Contract as detailed in the Contract Documents, shall be made by the Contractor except as directed in writing by the Engineer, but the Engineer shall have full powers, subject to the provisions hereinafter contained, from time to time, during the execution of the Contract, to issue Notice in writing to instruct the Contractor to make such Variation without prejudice to the Contract. The Contractor shall carry out such Variation and be bound by the same conditions as far as applicable as though the said Variations occurred in the Contract Documents. If any suggested Variations would, in the opinion of the Contractor, if carried out, prevent him from fulfilling any of his obligations or Guarantees under the Contract, he shall notify the Engineer thereof in writing and the Engineer shall decide forthwith whether or not, the same shall be carried out and if the Engineer confirms his instructions, the Contractor's obligations and Guarantees shall be modified to such an extent as may be mutually agreed to. Any agreed difference in Cost occasioned by any such variation shall be added to or reduced from the Contract Price as the case may be.

22.2 In the event of Engineer requiring any Variation, a reasonable and proper Notice shall be given to the Contractor to enable him to Work his arrangement accordingly, and in cases where Goods or Materials are already prepared or any Design, Drawings or Pattern made or Work done requires to be altered, a reasonable and agreed Sum in respect thereof shall be paid to the Contractor.

22.3 In any case in which the Contractor has received instructions from the Engineer as to the requirement of carrying out the Alterations or Additions or Substitute which either then or later on, will, in the opinion of the Contractor, involve a Claim for additional Payment, the Contractor shall immediately and in no case later than thirty (30) days, after receipt of the instructions aforesaid and before carrying out the instructions, advise the Engineer to that effect. But the Engineer shall not become liable for the Payment of any charges in respect of any such Variations, unless the instructions for the Performance of the same shall be confirmed in writing by the Engineer.

22.4 If any variation in the Works results in reduction of Contract Price, the Parties shall agree, in writing, as to the extent of any change in the Price, before the Contractor proceeds with the Change.

22.5 In all the above cases, in the event of a disagreement as to the reasonableness of the said Sum, the decision of the Engineer shall prevail.

22.6 Notwithstanding anything stated above in this Clause, the Engineer shall have the full power to instruct the Contractor, in writing, during the execution of the Contract to vary the Quantities of the items or groups of items in accordance with the provision of Clause entitled 'Change of Quantity' in Section GCC of this Volume - I. The Contractor shall carry out such Variations and be bound by the same conditions as though the said Variations occurred in the Contract Documents. However, the Contract Price shall be adjusted at the rates and the Prices provided for the Original Quantities in the Contract.

23.0 **Assignment and Sub-letting of Contract:**

23.1 For Components/ Equipment procured by the Contractor for the purposes of the Contract, after obtaining the written approval of the BESCOM, the Contractor's Purchase Specifications and Enquiries shall call for Quality Plans to be submitted by the Suppliers along with their Proposals. The Quality Plans called for from the Vendors shall set out, during the various stages of Manufacture and Installation, the Quality Practices and Procedures followed by the Vendor's Quality Control Organization, the relevant reference Documents/ Standard used, acceptance level, inspection Documentation raised, etc. Such Quality Plans of the successful Vendors shall be discussed and finalised in consultation with the Engineer and shall form a part of the Contract between the Contractor and the Vendor. Within 3 weeks of the release of the Contracts for such Components, a copy of the same without Price details put together with detailed Purchase Specifications, Quality Plans and Delivery Conditions shall be furnished to the Engineer by the Contractor.

24.0 **Change of Quantity:**

24.1 In case of discrepancy in Quantities indicated in the Drawings and that specified in Price Schedule, actual Quantities indicated in Price Schedule to be followed.

24.2 **During the execution of the Contract, the BESCOM reserves the right to increase or decrease the Quantities of items under the Contract without any change in unit Price or other Terms and Conditions, without exceeding the contract value.** Such Variations shall not be subjected to any limitations for the individual items but the total Variation in all such items under the Contract shall

be limited to a percentage of the Contract Price as specified in the General Conditions of Contract. **The BESCOM reserves the right to increase or decrease the Quantity not exceeding 25% of the Value of the item wise fixed Price Contract, without exceeding the contract value**. For quantity variation of individual items and Total Cost Variation, the matter shall be referred to the General Manager (Elec), Procurement, BESCOM.

The Contractor shall be responsible for supply and execution of such final quantities for completion of the work and they shall be paid for such finalized quantity at the unit rate indicated in the price schedule.

24.3 The Contract Price shall accordingly be adjusted based on the Unit Rates available in the Contract for the change in Quantities as above. The base Unit Rates, as identified in the Contract shall however remain constant during the currency of the Contract, except as provided for in Clause 33.0 below. In case the Unit Rates are not available for the material/labour whose rates are not available, the same shall be dealt as stipulated in clause 1.5 (vi) of IFB.

25.0 **Packing, Forwarding and Shipment:**

25.1 The Contractor, wherever applicable, shall after proper painting, pack and crate all Equipment in such a manner as to protect them from deterioration and Damage during Rail and Road Transportation to the Site and Storage at the Site till the time of Erection. The Contractor shall be held responsible for all Damages due to improper packing.

25.2 The Contractor shall notify the BESCOM of the date of each Shipment from his Works, and the expected date of arrival at the Site for the information of the BESCOM.

25.3 The Contractor shall also give all Shipping information concerning the weight, size and content of each packing including any other information the BESCOM may require.

25.4 The following Documents shall be sent by Registered Post to the BESCOM within 3 days from the date of Shipment, to enable the BESCOM to make progressive Payments to the Contractor.

i. Copies of the Contractor’s invoice showing DWA reference, Goods description, quantity, unit price, total amount.
ii. Packing list;
iii. Receipted LR;
iv. Manufacturer’s/Contractors guarantee certificate;

v. Material Inspection Clearance Certificate (MICC) for dispatch issued by the Owner or the Independent Agency appointed by the Owner and the Contractor's factory inspection report.
vi. Insurance certificate ; and
vii. Certificate of Origin.

25.5 The Contractor shall prepare detailed packing list of all packages and containers, bundles and loose Material forming each and every Consignment dispatched to Site. The Contractor shall further be responsible for making all necessary arrangements for loading, unloading and other handling right from his Works up to the Site and also till the, Equipment/Material is erected, Tested and Commissioned. He shall be solely responsible for proper Storage and Safe Custody of all Equipment.

25.6 The Contractor shall apply in writing to the Owner for permission to deliver any equipment or Contractor's Equipment to the Site. No equipment or Contractor's Equipment may be delivered to the Site without the Owner's written permission in the form of Dispatch Instructions.

26.0 **Co-Operation with other Contractors and Consulting Engineers:**

The Contractor shall agree to co-operate with the BESCOM's other Contractors and Consulting Engineers and freely exchange with them such Technical information as is necessary to obtain the most efficient and economical Design and to avoid unnecessary duplication of efforts. The Engineer shall be provided with three copies of all correspondence addressed by the Contractor to other Contractors and Consulting Engineers of the BESCOM in respect of such exchange of Technical information.

27.0 **No Waiver of Rights:**

Neither the inspection by the BESCOM or the Engineer or any of their Officials, Employees, or Agents, nor any Order by the BESCOM or the Engineer for Payment of money or any Payment for or acceptance of the whole or any part of the Works by the BESCOM or the Engineer, nor any extension of time, nor any possession taken by the Engineer shall operate as a waiver of any provision of the Contract, or of any power herein reserved to the BESCOM or any right to Damages herein provided nor shall any waiver of any breach in the Contract be held to be a waiver of any other or subsequent breach.

28.0 **Certificate not to affect right of BESCOM and liability of Contractor**:

No interim Payment Certificate of the Engineer, nor any Sum paid on account by the BESCOM, nor any extension of time for execution of the Works granted by the Engineer shall affect or prejudice the rights of the BESCOM against the Contractor or relieve the Contractor of his obligation for the due Performance of the Contract, or be interpreted as approval of the Works done or of the Equipment furnished and no Certificate shall create liability for the BESCOM to pay for alterations, amendments, variations or additional Works not Ordered, in writing, by the Engineer or discharge the liability of the Contractor for the Payment of Damages whether due, ascertained, or certified or not or any Sum against the Payment of which he is bound to indemnify the BESCOM, nor shall any such Certificate nor the acceptance by him of any Sum paid on account or otherwise affect or prejudice the rights of BESCOM against the Contractor.

29.0 **Training of BESCOM's Personnel:**

29.1 Void

30.0 **Progress Reports and Photographs:**

During the various stages of the Work in pursuance of the Contract, the Contractor shall at his own Cost submit Periodic Progress Reports as may be reasonable required by the Engineer with such Materials as, Charts, Net Works, Photographs, Test Certificates, etc. Such Progress Reports shall be in the form and size as may be required by the Engineer and shall be submitted in at least Three (3) copies.

31.0 **Taking Over:**

Upon successful Completion of all the Tests to be performed at Site on Equipment’s/Materials supplied and erected by the Contractor, the Engineer shall issue to the Contractor a Taking Over Certificate as a proof of the final acceptance of the Equipment **on due submission of as-built drawings for all Equipments/Materials installed under the said works**, if any. Such Certificate shall not unreasonably be withheld nor will the Engineer delay the issuance thereof on account of minor omissions or defects, which do not affect the Commercial Operation and/or cause any serious risk to the Equipment. Such Certificate shall not relieve the Contractor of any of his obligations which otherwise survive, by the Terms and Conditions of the Contract after issue of such Certificate.

C. CONTRACT SECURITY AND PAYMENTS

32.0 **Contract Performance Guarantee/ Guarantee:**

32.1 As mentioned in Clause 36.0, Section-II, Instructions to Bidders (ITB) Volume-I, the Successful Bidder to whom Contract is awarded, shall furnish Contract Performance Guarantee to the BESCOM within Fifteen (15) days of Owner's Letter of Intent of the Contract.

32.2 The Successful Bidder to whom the Contract is awarded, shall be required to furnish the Performance Guarantee in the form of Bank Guarantee issued by a Public Sector Indian Bank/Scheduled Commercial Bank as per the format in favour of the General Manager, Procurement, BESCOM. ***The Contract Performance Guarantee amount shall be equal to Five percent (5%) of the total item wise fixed price contract value*** and it shall guarantee the faithful Performance of the Contract in accordance with the Terms and Conditions specified in these Documents and Specifications. The Guarantee shall be valid up to 90 days after the end of Warranty Period, as referred to in Clause 15.0, Section-III, General Conditions of Contract GCC, Volume-I.

32.3 The Contract Performance Guarantee amount shall be unconditional and irrevocable and the amount therein shall be payable to the Owner on demand without any condition whatsoever.

32.4 The Contract Performance Guarantee shall additionally cover the following Guarantees to the Owner.

a) The Contractor shall Guarantee the Successful and Satisfactory Operation of the Equipment supplied under the Contract, as per the Specifications and Documents.

b) The Contractor shall furnish Guarantee that the Equipment provided by him/his Sub-Vendors shall be free from all defects in Design, Material and Workmanship and that it shall, upon written Notice from the BESCOM, fully remedy, free of expenses to the BESCOM, such defects as may develop under the normal use of the said Equipment within the period of Guarantee / Warranty specified in the relevant Clause of Section-III, General Conditions of Contract GCC, Volume-I.

33.0 **Contract Price Adjustment:**

33.1 The approved prices are fixed throughout the contract period. The prices are variable only for the materials mentioned in clause 14.0 of section ITB of the bid document.

34. Payment:

34.1 The Payment to the Contractor for the Performance of the Works under the Contract will be made by the BESCOM as per the guidelines

and Conditions specified herein and as per the payment terms stipulated vide clause no. 8.0 of Section–V, Special Conditions of Contract- SCC, Volume-I. All Payment made during the Contract shall be on account Payments only. The final Payment will be made on Completion of all Works and on fulfillment by the Contractor of all his liabilities under the Contract.

34.2 **Currency of Payment**

All Payments under the Contract shall be in Indian Rupees only.

34.3 **Payment Schedule:**

The Contractor shall prepare and 'Submit to the Engineer for approval a break up of the Contract Price. This Contract Price break-up shall be inter-linked with the agreed detailed **Activity Chart /** PERT Net Work of the Contractor setting forth his starting and Completion dates for the various key phases of Works prepared as per condition in Clause 12.0 of Section-III, General terms & Conditions-GCC, Volume-I.

34.4 **Application for Payment:**

The Contractor shall submit application for the Payment in the prescribed proforma of the BESCOM. Each of such application shall state the amount Claimed and shall set forth in detail, in the Order of the Payment Schedule, particulars of the Works including the Works executed at Site and of the Equipment shipped/brought on to the Site pursuant to the Contract up to the date mentioned in the application and for the period covered since the last preceding Certificate, if any. Every interim Payment Certificate shall certify the Contract value of the Works executed up to the date mentioned in the application for the Payment Certificate provided that no Sum shall be included in any interim Payment Certificate in respect of the Works that, according to the decision of the Engineer, does not comply with the Contract, or has been performed, at the date of Certificate prematurely.

34. 5 **Mode of Payment:**

Payment due on dispatch of Equipment shall be made by the BESCOM directly to the Contractor as per the Payment Schedule. The Payment of the advance, if any test charges, if any Price adjustment, if any other supply Payment, **all applicable CGST, SGST, IGST, UTGST, CESS if any**, duties (whenever admissible) inland transportation (including port handling), Insurance in the Erection Portion of the Works shall be made directly to the Contractor by the BESCOM.
Note: Necessary documents for the above shall be produced for arranging the payment.

35.0 **Deductions from Contract Price:**

All Costs, Damages or expenses which the BESCOM may have paid, for which under the Contract the Contractor is liable, will be claimed by the BESCOM. All such Claims shall be billed by the BESCOM to the Contractor regularly as and when they fall due.
Such bills shall be supported by appropriate and certified vouchers or explanations, to enable the Contractor to properly identify such Claims. Such Claims shall be paid by the Contractor within thirty (30) days of the receipt of the corresponding bills and if not paid by the Contractor within the said period, the BESCOM may then deduct the amount, from any monies due or becoming due to the Contractor under the Contract or may be recovered by actions of Law or otherwise. If any excess payments made to the contractor or any recovery to be made from the contractor in respect of other awarded works same shall be deducted from the bills due to the Contractor or by actions of Law or otherwise**.**

D. RISK DISTRIBUTION

36.0 **Transfer of the Title:**

36.1 **For Contractor Supplied Equipment's/Materials:**

36.1.1 Transfer of the title in respect of equipment and materials supplied by the Contractor to the BESCOM pursuant to the terms of the Contract shall pass on to the BESCOM with negotiation of dispatch documents.

36.1.2 This Transfer of Title shall not be construed to mean the acceptance and the consequent "Taking Over" of equipment and materials. The Contractor shall continue to be responsible for the quality and performance of such equipment and materials and for their compliance with the specifications until "Taking Over" and the fulfillment of guarantee provisions of this Contract.

36.1.3 This Transfer of Title shall not relieve the contractor from the responsibility for all risks of loss or damage to the equipment and materials as specified under the clause entitled 'insurance' of this section.

36.2 The Contractor shall be fully responsible for the safety of all the Equipment's/ Materials while the same are under his custody as above until **"Taking Over"** by the BESCOM in accordance with Clause 9.0 of Section-V, Special Conditions of Contract-SCC, Volume-I.

37.0 **Insurance:**

37.1 The Contractor at his Cost shall arrange, secure and maintain all Insurance as may be pertinent to the Works and obligatory in terms of law to protect his interest and interests of the Owner against all perils detailed herein. The form and the limit of such Insurance as defined herein together with the under-writer in each case shall be acceptable to the Owner. However, irrespective of such acceptance, the responsibility to Maintain adequate Insurance Coverage at all time during the period of Contract shall be of Contractor alone. The Contractor's failure in this regard shall not relieve him of any of his Contractual responsibilities and obligations. The Contractor shall, however, be authorized to deal directly with Insurance Company or Companies and shall be responsible in regard to maintenance of all Insurance covers. Further the Insurance should be in freely convertible Currency.

37.2 Any loss or damage to the equipment during handling, transportation, storage, erection, putting into satisfactory operation and all activities to be performed till the successful completion of commissioning of the equipment shall be to the account of the Contractor. The Contractor shall be responsible for preference of all claims and make good the damages or loss by way of repairs and/or replacement of the equipment, damaged or lost. The transfer to title shall not in any way relieve the Contractor of the above responsibilities during the period of contract. The Contractor shall provide the Owner with copies of all insurance policies and documents taken out by him in pursuance of the contract. Such copies of documents shall be submitted to the Owner immediately after such Insurance coverage. The Contractor shall also inform the Owner in writing at least sixty (60) Days in advance regarding the expiry /cancellation and/or change in any of such Documents and ensure revalidation, renewal etc. as may be necessary well in time.

37.3 The perils required to be covered under the Insurance shall include, but not be limited to fire and allied risks, miscellaneous accidents (Erection risks) Workman compensation risks, loss or Damage in transit, theft, pilferage, riot and strikes and malicious Damages, civil commotion, weather conditions, accidents of all kinds, etc. The Scope of such Insurance shall be adequate to cover the Replacement/Reinstatement Cost of the Equipment for all risks up to and including delivery of Goods and other Costs till the Equipment is delivered at Site. The Insurance policies to be taken should be on replacement value basis and/or incorporating escalation Clause. Notwithstanding the extent of Insurance cover and the amount of Claim available from the underwriters, the Contractor shall be liable to make good the full replacement/ rectification value of all

Equipment/Materials and to ensure their availability as per Project requirements.

37.4 All Costs on account of Insurance liabilities covered under the Contract will be on Contactor's account and will be included in Contract Price. However, the Owner may from time to time, during the pendency of the Contract, ask the Contractor in writing to limit the Insurance coverage, risks and in such a case, the Parties to the Contract will agree for a mutual settlement, for reduction in Contract Price to the extent of reduced Premium amount. The Contractor, while arranging the Insurance shall ensure to obtain all discounts on Premium that may be available for higher Volume or for reason of financing arrangement of the Project.

37.5 The Clause entitled 'Insurance' under the Section-IV, Erection Conditions of Contract-ECC, Volume-I covers the additional Insurance requirements for the portion of the Works to be performed at the Site.

38.0 **Liability for Accidents and Damages:**

Under the Contract, the Contractor shall be responsible for loss or Damage to the Plant / Structures until the successful Completion of Commissioning as defined elsewhere in the Bid Document.

39.0 **Delays by BESCOM or his Authorized Agents:**

39.1 In case the Contractor's Performance is delayed due to any act of omission on the part of the BESCOM or his authorized Agents, then the Contractor shall be given due extension of time for the Completion of the Works, to the extent such omission on the part of the BESCOM has caused delay, in the Contractor's Performance of the Contract. Regarding reasonableness or otherwise of the extension of time, the decision of the Engineer shall be final.

39.2 In addition, the Contractor shall be entitled to Claim demonstrable and reasonable compensation if such delays have resulted in any increase in Cost. The BESCOM shall examine the justification for such a request for Claim and if satisfied, the extent of compensation shall be mutually agreed depending upon the circumstances at the time of such an occurrence.

40.0 **Demurrage, Wharf age, Etc.**
All demurrage, wharfage, and other expenses incurred due to delayed clearance of the Material or any other reason shall be to the account of the Contractor.

41.0 **Force Majeure:**

41.1 Force Majeure is herein defined as any cause which is beyond the control of the Contractor or the BESCOM as the case may be, which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affects the Performance of the Contract, such as:

a) Natural Phenomena, including but not limited to Floods, Droughts, Earthquakes and Epidemics.

b) Acts of any Government, domestic or foreign, including but not limited to War declared or undeclared, Priorities, Guarantees, and Embargoes. Provided either Party shall, within fifteen (15) days from the occurrence of such a cause, notify the other in writing of such causes.

41.2 The Contractor or the BESCOM shall not be liable for delays in performing his obligations resulting from any Force Majeure cause as referred to and/or defined above. The date of Completion will subject to hereinafter provided, is extended by a reasonable time even though such cause may occur after Contractor's Performance of obligation has been delayed due to other causes.

41.3 **Bankruptcy:**

If the Contractor shall become bankrupt or otherwise insolvent or have a receiving Order made against him or compound with his Creditors, or being a Corporation commence to be wound up, not being a voluntary winding up for the purpose only of amalgamation/ reconstruction, or carry on its business under a receiver for the benefit of its Creditors or any of them, the BESCOM will be at liberty:

a) To terminate the Contract forthwith by Notice in writing to the Liquidator or Receiver or to any Persons in whom the Contract may become vested and to act in the manner Provide in Clause 43.0 infra titled 'Contractor's Default Liabilities', as though the last mentioned Notice has been the Notice referred to in such Clause and the Equipment Materials and Works have been taken out of the Contractor's hands;

b) To give such Liquidator, Receiver, or other Persons the option of carrying out the Contract subject to his providing a Guarantee, for the due and faithful Performance of the Contract, up to an amount, to be determined by the BESCOM.

42.0 **Suspension of Work:**

42.1 The BESCOM reserves the right to suspend and reinstate execution of the whole or any part of the Works without invalidating the provisions of the Contract. Orders for suspension or reinstatement of the Works will be issued by the Engineer to the Contractor in writing. The time

for Completion of the Works will be extended for a period equal to duration of the suspension.

42.2 Any necessary and demonstrable Cost incurred by the Contractor as a result of such suspension of the Works will be paid by the BESCOM, provided such Costs are substantiated to the satisfaction of the Engineer. The BESCOM shall not be responsible for any liabilities if suspension or delay is due to some default on the part of the Contractor or his Sub- Contractor.

43.0 **Contractor's Default**

43.1 If the Contractor shall neglect to execute the works with due diligence and expediency or shall refuse or neglect to comply with any reasonable Order given to him, in writing by the Engineer in connection with the works or shall contravene the provisions of the contract, the Owner may give notice in writing to the Contractor to make good the failure / neglect or contravention complained of. Should the Contractor fail to comply with the notice within thirty (30) days from the date of serving the notice, then and in such case the Owner shall be at liberty to employ other workmen and forthwith execute such part of the works as the Contractor may have neglected to do or if the Owner shall think fit, without prejudice to any other right he may have under the contract to take the work wholly or in part out of the Contractor’s hands and re-contract with any other persons or persons to complete the works or any part thereof and in that event the Owner shall have free use of all Contractor’s equipment that may have been at the time on the site in connection with the works without being responsible to the Contractor for fair wear and tear thereof and to the exclusion of any right of the Contractor over the same, and the Owner shall be entitled to retain and apply balance which may otherwise be due on the Contract by him to the Contractor, or such part of the works or of completing the works as the case may be. If the cost of completing the works or executing a part there of as aforesaid shall exceed the balance due to the Contractor, the Contractor shall pay such excess amount. Such payment of excess amount shall be independent of the **Penalty** for delay, which the Contractor shall have to pay if the completion of works is delayed.

43. 2 In addition, such action by the BESCOM as aforesaid shall not relieve the Contractor of his liability to pay Penalty for delay in Completion of Works as defined in **Clause 14.0** of this Section.

43.3 Such action by the BESCOM as aforesaid the termination of the Contract under this Clause shall not entitle the Contractor to reduce the value of the Contract Performance Guarantee nor the time thereof. The Contract Performance Guarantee shall be valid for the full

value and for the full period of the Contract including Guarantee period.

44.0 **Termination of Contract on BESCOM's Initiative**

44.1 The BESCOM reserves the right to terminate the Contract either in part or in full due to reasons other than those mentioned under Clause entitled Contractor's Default. The BESCOM shall in such an event give fifteen (15) days Notice in writing to the Contractor of his decision to do so. The Contractor, upon receipt of such Notice, shall discontinue the Work on the date and to the extent specified in the Notice, make all reasonable efforts to obtain cancellation of all Orders and Contracts to the extent they are related to the Work terminated and terms Satisfactory to the BESCOM. Stop all further Sub-Contracting or Purchasing activity related to the Work terminated, and assist the BESCOM in Maintenance, Protection, and Disposition of the Works acquired under the Contract by the BESCOM.

44.2 In the event of such a termination the Contractor shall be paid the amount due to him for the work already under taken. If the Contractor is an individual or a Proprietary Concern and the individual or the proprietor dies and if the Contractor is a Partnership Concern and one of the Partners dies, then unless the BESCOM is satisfied that the legal Representatives of the individual Contractor or of the Proprietor of the Propriety Concern and in the case of Partnership, the surviving Partners, are capable of carrying out and completing the Contract, the BESCOM shall be entitled to cancel the Contract as to its incomplete part without being in any way liable to Payment of any compensation to the estate of deceased Contractor and/or to the Surviving Partners of the Contractor's Firm on account of the cancellation of the Contract except the amount which has already become due and payable. The decision of the BESCOM that the legal Representatives of the deceased Contractor or Surviving Partners of the Contractor, cannot carryover and complete the Contract, shall be final and binding on the Parties. In the event of such cancellation the BESCOM shall not hold the estate of the deceased Contractor and/or the Surviving Partners of the Contractor’s Firm liable to Damages for not completing the Contract.

44.3 **Delays in the Contractor's Performance:**

Delay by the Contractor in the Performance of his obligations under the Contract shall render the Contractor liable for any, or all of the following sanctions:

a. Forfeiture of his Performance Guarantee.
b. Imposition of Penalty and/or
c. Termination of Contract for default as detailed herein.

If, at any time during Performance of the Contract, the Contractor should encounter conditions impending timely delivery of the Goods and for Performance of Services, the Contractor shall promptly notify the BESCOM, in writing, of the fact of the delay, its likely duration and its cause(s). Upon receipt of the Contractor's request, the BESCOM shall evaluate the situation and may, at his discretion, extend the time for Performance, in which case the extension shall be ratified by an amendment to Notification of Award/Contract Agreement.

45.0 **Frustration of Contract:**

45. 1 In the event of Frustration of the Contract because of supervening impossibility in terms of Section 56 of the Indian Contract Act, the Parties shall be absolved of their responsibility to perform the balance portion of the Contract, subject to provisions contained in sub-Clause 45.3 below.

45.2 In the event of non-availability or suspension of Funds for any reasons whatsoever (except for reason of willful or flagrant breach by the BESCOM) and or Contractor, then the Work under the Contract shall be suspended. Further more, if the BESCOM is unable to make Satisfactory, alternative arrangements for Financing to the Contractor in accordance with the terms of the Contract within three Months of the event, the Parties hereto shall be relieved from carrying out further obligations under the Contract treating it as Frustration of the Contract.

45.3 In the events referred to in Sub-Clauses 45.1 and 45.2 above, the Parties shall mutually discuss to arrive at reasonable settlement on all issues including amounts due to either Party for the Work already done on "Quantum Merit" basis that shall be determined by mutual agreement between the Parties.

46.0 **Grafts and Commissions etc:**

Any Graft, Commission, Gift or advantage given, promised or Offered by or on behalf of' the Contractor or his Partner, Agent, Officers, Director, Employee or Servant or any one on his or their behalf in relation to the obtaining or to the execution of this or any other Contract with the BESCOM, shall in addition to any Criminal liability which it may incur, subject the Contractor to the cancellation of this and all other Contracts and also to Payment of any loss or Damage to the BESCOM resulting from any cancellation. The BESCOM shall then be entitled to deduct the amount so payable from any money otherwise due to Contractor, under the Contract

E. RESOLUTION OF DISPUTES

47.0 Settlement of disputes:

47.1 Any dispute(s) or difference(s) arising out of or in connection with the Contract shall, to the extent possible, be settled amicably between the Parties.

47.2 If any dispute or difference of any kind whatsoever shall arise between the BESCOM and the Contractor, arising out of the Contract for the Performance of the Works whether during the progress of the Works or after its Completion or whether before or after the termination, abandonment or breach of the Contract, it shall, in the first place, be referred to and settled by the Engineer, within a period of thirty (30) days after being requested by either Party to do so, shall give written Notice of his decision to the BESCOM and the Contractor.

47.3 Save as hereinafter provided, such decision in respect of every matter so referred shall be final and binding upon the Parties until the Completion of the Works and shall forthwith be given effect to by the Contractor who shall proceed with the Works with all due diligence.

47. 4 During settlement of disputes and Court Proceedings, both Parties shall be obliged to carryout their respective obligations under the Contract.

48.0 **Reconciliation of Accounts:**
The Contractor shall prepare and submit every month, a statement covering Payments Claimed and the Payments received vis-a-vis the Works executed, for reconciliation of Accounts with the BESCOM.

49.0 **Inspection and Tests:**

49.1 The successful bidder shall give the inspection call letter in advance before 10 days from the schedule date of inspection to the **General Manager (Elec), Procurement, BESCOM,** for inspection, which include date and place at which the material will be ready for inspection. After inspection of the material and conformity with the relevant standards, necessary dispatch instructions will be issued by the **General Manager (Elec), Procurement, BESCOM.**

49.2 The Owner or his Representative shall have the right to inspect and/or to Test the Goods to confirm their conformity to the Contract. The Owner will depute Engineers from BESCOM for inspecting the equipment's / materials. The Visa, to and fro travel expenses from the place of working of officials deputed for inspection, boarding charges,

lodging charges and other incidental expenses of the inspecting Engineers for inspections to be carried out outside the country are to be borne by the Contractor. The Special Conditions of Contract and/or the Technical Specifications shall specify the Inspections and Tests the Owner requires to be done and the place where they are to be conducted. The Owner shall notify the Supplier/Contractor in writing on the identity of any Representatives authorized for these purposes.

49.3 The Inspection and Tests may be conducted on premises of the Supplier/Contractor or its Sub-Contractor at point of delivery and/or at the Goods final destination. When conducted on the premises of the Supplier/ Contractor/ his Sub-Contractor, all reasonable facilities and assistance including access to Drawings and Production Data shall be furnished to the Inspectors at no charge to the Owner.

49.3.1 If any inspected or Tested Goods fail to conform to the Specifications, the BESCOM may reject them and the Supplier / Contractor shall either replace the rejected Goods or make all alterations necessary to meet Specification requirements free of Cost to the BESCOM. Should the Contractor/ his Sub-Supplier fails to Offer Materials/ Equipment for inspection on the specified date or the Materials fails during the Test, all the expenses incurred by the BESCOM for subsequent inspections should be borne by the Contractor.

49.3.2 The levy of re-inspection charges on the default firms when BESCOM Officers are deputed for 2nd time for inspection of materials/equipment which were not ready for inspection on first visit or materials rejected on first time as follows:

(a) Rs. 50,000/- per person, per day + GST prevailing/applicable on the day of inspection + any other Tax as per statutory requirement.

+

(b) Actual To & Fro charges by Air/Train/Bus. (as the case may be)

49.4 The BESCOM's reserves the right to inspect, Test and, where necessary, reject the Goods after the arrival of the Goods shall in no way be limited or waived for the reason that the Goods have been previously inspected, Tested and passed by the BESCOM or his Representative prior to/after the transportation of Goods.

49.5 Nothing in Clause 49.1 to 49.4 shall, in any way, release the Supplier / Contractor from any Warranty or other obligations under this Contract.

50.0 Notices:

50.1 Any Notice given by one Party to the other, pursuant to Contract, shall be sent in writing by Registered Post with Acknowledgement Due or Fax or E-mail. Fax / E-mail Notice shall be confirmed in writing to the address specified in the Contract.

50. 2 Notice(s) shall be deemed to **have been duly and properly** served upon the Parties hereto, if sent by any of the above-mentioned methods to the address mentioned in the Contract.

50.3 A Notice shall be effective when issued by one of the above-mentioned modes or on the Notice's effective date, whichever is later.

General Manager, (Ele.,)
Procurement, BESCOM

" END OF SECTION –III : GCC"